their import is not possible, when often their terms are not clearly understood, or are printed in some obscure place in the bill of lading, often in type too small to be understood, or at a moment when repudiation of them is annoying and irksome to the customer; when the shipper and carrier no longer stand on the same ground of equality, as, since the introduction of railways, all competition is virtually done away with; it certainly does not appear harsh or improper for a court to examine the propriety or legality of such stipulations at a subsequent period, and if they shall appear to be unjust and unreasonable, to hold them to be void, and relieve the shipper from the effect of their terms.

Whether the rule decided in the principal case be sound in principle or not, there certainly does appear to be equal if not much greater authority for the assertion of a contrary doctrine.

ARTHUR BIDDLE.

United States Circuit Court, District of New Jersey.

ROUEDE v. MAYOR, ETC., OF JERSEY CITY.

A *bona fide* holder of municipal bonds cannot be prejudiced by the fact that the merely formal requirements of the statute authorizing their issue were not complied with.

Overdue and unpaid coupons attached to municipal bonds are not sufficient to put a purchaser upon inquiry, so as to charge him with notice of defects of title.

IN debt.

Robert O. Babbitt, for plaintiff.

Allan L. McDermott, for defendant.

NIXON, J.—The principle is well settled by the Supreme Court that, in a suit by a *bona fide* holder against a municipal corporation to recover the amount of coupons due or bonds issued under authority conferred by law, no questions of form merely, or irregularity or fraud or misconduct on the part of the agents of the corporation, can be considered. The only matters left open in this case for inquiry are, 1. The authority to issue the bonds by the laws of the state, and 2. The *bona fides* of the holder: *East Lincoln* v. *Davenport*, 94 U. S. 801; *Pompton* v. *Cooper Union*, 101 Id. 196; *Copper* v. *Mayor, etc., of Jersey City*, 15 Vroom 634.

This suit is brought upon twenty bonds of the defendant corporation, of the denomination of $1000 each, sixteen of which are dated July 1st 1873, and the remaining four October 1st 1873. The recital appears upon the face of the sixteen that they were issued

under a resolution of the board of finance and taxation of Jersey City, of the date of June 1st 1873, and in conformity with an act of the legislature of New Jersey, entitled "An act to reorganize the local government of Jersey City," approved March 31st 1871, and the several supplements thereto, and under the second section of the supplement of April 4th 1873. The recital upon the face of the other four bonds is that they also are issued by the board of finance and taxation, under the authority of section 156 of the city charter. An examination of the charter and supplements referred to, renders it certain that ample legislative authority was granted for the issue of the bonds. It is of no importance in the pending suit whether or not the city officials complied with all the requirements of the law in the method or manner of their issue. If there was any dereliction on their part, as was so strongly urged by the counsel for the defendant on the argument, the rights of a *bona fide* holder are not to be prejudiced thereby.

Is the plaintiff such holder? The evidence is quite meager in regard to the facts. But I gather the following, either from the testimony of the witnesses, or from the admissions of counsel at the hearing. Just after the panic of 1873, Jersey City was found to be unable to meet a number of matured claims, which were being pressed for payment. The board of finance and taxation, in which was vested the power of issuing the bonds of the city, made arrangements with a number of holders of claims to pay them with bonds of the city at par. These were issued, and after consultation with the mayor, it was agreed that they should be delivered into the hands of Alexander D. Hamilton, Jr., the city treasurer, who was to use them in settlement of the claims as they were presented. Mr. Lockwood, chairman of the committee of finance and taxation, states that the treasurer had a list of certain specified claims, which consisted largely of improvement certificates, and upon presentation of these certificates, as specified, he was to make the exchange in bonds and settle the difference in cash. Instead of using the bonds for the purpose designated, the treasurer absconded in the fall of 1873, carrying with him city bonds of the par value of $47,000. They were all of the denomination of $1000 each, and the coupons on which this suit is brought were attached to twenty of them. Hamilton turned up in Mexico, where, it is presumed, he negotiated the bonds. The next information we have respecting them is, that on May 10th 1879, the plaintiff, then residing at Matamoras, in Mexico,

purchased for the sum of $18,000, twenty of the bonds of one M. Jesus De Lira, a life-long resident of Matamoras—a gentleman who had been a general merchant, but had then retired from general business, and only undertook such occasional matters as presented themselves from time to time. The plaintiff, on his examination, states that he had been acquainted with De Lira fourteen years, and upon being asked whether he took any steps at the time of the purchase to ascertain if the bonds were issued by the defendants, he replied:

"The bonds appeared, on their face, to have been issued by the proper officers, and I believed that I should have nothing to do but transmit them for payment to my correspondents in New York. I had known Mr. Lira for a long time, and had many business dealings with him, without ever having any difficulty or reason to mistrust him. It sufficed, therefore, that he should offer me these bonds as good bonds, for me to accept them without hesitation—there being nothing on the face of the bonds, or in the circumstances under which they were presented, to arouse my suspicions."

This is the plaintiff's statement of the circumstances under which the sale was made. It stands uncontradicted. The burden of establishing the defence is upon the defendant, and unless there is something about the bonds which should have put the plaintiff upon inquiry, he is entitled to recover.

The only fact upon which the defendant's counsel seemed to rely on the argument was, that at the time of the purchase there were attached to the bonds eleven overdue coupons, representing half-yearly amounts of matured interest, and amounting in the aggregate to $7700. Being questioned in regard to these, the plaintiff further testified that, having no suspicion he made no inquiries in regard to the bonds, except that, observing these overdue coupons, he asked the vendor why they had not been collected, and received for answer that "they were probably not payable yet." Was the mere presence of these unpaid and overdue coupons sufficient of itself to put the purchaser upon inquiry? Or rather, in view of the decisions of the Supreme Court on this point, was his neglect to institute further inquiries proof of bad faith on his part?

In *Murray* v. *Lardner*, 2 Wall. 110, the Supreme Court with great deliberation reiterated the settled law, that coupon bonds of the ordinary kind, payable to bearer, passed by mere delivery; that a purchaser of them in good faith was unaffected by want of

title in the vendor; and that the burden of proof on a question of such faith lies on the party who assails the possession. Mr. Justice SWAYNE, speaking for the whole court, says: "Suspicion of defect of title, or the knowledge of circumstances which would excite suspicion in the mind of a prudent man, or gross negligence on the part of the taker at the time of the transfer, will not defeat his title."

Again, in *Cromwell* v. *County of Sac*, 96 U. S. 58, the same court, by Mr. Justice FIELD, says: "As with other negotiable paper, mere suspicion that there may be a defect of title in its holder, or knowledge of circumstances which would excite suspicion as to his title in the mind of a prudent man, is not sufficient to impair the title of the purchaser. That result will only follow where there has been bad faith on his part."

In the last case the question was also considered whether overdue and unpaid coupons for interest, attached to a municipal bond which had several years to run, rendered the bond and the subsequently maturing coupons dishonored paper, so as to subject them in the hands of a purchaser for value to defences good against the original holder. The court held that their presence had no such effect, asserting that "the simple fact that an instalment of interest is overdue and unpaid, disconnected from other facts, is not sufficient to affect the position of one taking the bonds and subsequent coupons, before their maturity, for value, as a *bona fide* purchaser."

In *Parsons* v. *Jackson*, 99 U. S. 434, the payment of the bonds of a railway company in Louisiana was in controversy. The bonds had never been issued by the company, but had been seized and carried away during the late rebellion. They were drawn payable to bearer either in London, New York or New Orleans, and the president of the company was authorized to fix the place of payment by his endorsement thereon. When stolen they contained no such endorsement. They were offered for sale and were sold for a very small consideration in the market of New York, with due and unpaid coupons for several years attached to them. The court held that the absence of the required endorsement was a defect which deprived the bonds of the character of negotiability, and that the purchaser was affected with notice of their invalidity. Mr. Justice BRADLEY, speaking for the court, asserted "that the presence of the part due and unpaid coupons, was itself an evidence

of dishonor, sufficient to put the purchaser on inquiry." But in the subsequent case of *Railway Co.* v. *Sprague*, 103 U. S. 756, this expression of the learned justice is commented on, qualified and restricted, and it was again held, and may now be accepted as the law, that overdue and unpaid interest coupons attached to municipal bonds, are not in themselves sufficient to put the purchaser upon inquiry.

Let judgment be entered for the plaintiff.

The issue of municipal bonds is much more easily prevented than their payment can be avoided. After they have been sold to *bona fide* purchasers, the rights of the latter enable them to compel payment, however irregularly the bonds may have been issued, if the irregularity be not such as to render them void. It is intended in this note to indicate some of the grounds of restraining an issue of such bonds.

Special Authority to Issue Bonds.—It is not infrequently the case, especially in the new states and territories, to authorize municipalities, by a special or private act of the legislature, to issue court-house, railway aid, and other bonds. Where a special act is passed it is believed to be operative as a repeal of any general statutes upon the same subject, at least, *pro tanto*, or so long as the special act shall continue in operation. All formalities required by the special act are in the nature of conditions precedent, performance of which is essential to the lawful issue of the bonds under that act. For example, if the special act require a vote to be taken within a given time, this is imperative. It must be performed, or the bonds cannot be issued if objection is made before they are put in circulation, although afterwards, perhaps, the objection might not be in time: *Essex Co. Railroad Co.* v. *Town of Lunenburg*, 49 Vt. 143; *McCoy* v. *Briant*, 11 Chi. Leg. News 84; *Leavenworth, &c., Railroad Co.* v. *County Ct. of Platte Co.*, 42 Mo. 171; *City* v. *Lamson*, 9 Wall. 477; *Steines* v. *Franklin County*, 48 Mo. 167. When the special act is once acted upon it is exhausted, and unless authority be given to act under it a second or other time, it cannot be proceeded under again: *Ill. Midland Railroad Co.* v. *Waynesville*, 6 Rep. 457; *State* v. *County Ct. of Daviess Co.*, 64 Mo. 30.

General Authority to Issue Bonds.—Of course, where general statutes authorize a municipality to issue bonds, there is no doubt of its power to do so. But how is it where power is given only to borrow money for building a court-house, jail or for other county purposes? It has been decided that authority to borrow carries with it power to issue bonds: *Myer* v. *City of Muscatine*, 1 Wall. 384; *Commonwealth* v. *Pittsburgh*, 41 Penn. St. 278; *Seybert* v. *City of Pittsburgh*, 1 Wall. 272; *Rogers* v. *Burlington*, 3 Id. 654. This is possibly the proper view for a court to take when it is sought as against a *bona fide* holder to invalidate bonds, as being *ultra vires*. But so liberal a construction of the word "borrow" ought not to be given when it is sought to restrain the issue of the bonds before they have been put in circulation.

In *Lewis* v. *Board of Co. Com. of Sherman Co.*, 5 Fed. Rep. 269, it is decided that a law authorizing the electors of a county to "borrow money" for the erection of a court-house, does not authorize them to *issue bonds* for that purpose, although it was intimated that the authority to issue bonds as an evidence of indebtedness might, perhaps,

follow as an incident of the right to borrow money, but in that case the amount of money borrowed should equal the amount for which the bonds call. Said Judge DUNDY: "It must be observed that the authority here conferred on the county commissioners is to *borrow money* to build a court-house. The law does not authorize the people to vote *bonds* to erect the building. They may, by their votes, empower the commissioners to *borrow money* for the purpose in question, but they cannot authorize the commissioners to issue bonds for such a purpose, and have them hawked around the county and sold to A., B. and C., to raise money at a ruinous discount for any such a purpose."

"It is *one* thing to authorize the borrowing of money to build a court-house when needed, but it is *another* and very *different* thing to vote for the issue of bonds therefor, when the law does not authorize it. It is true, if the people, by a proper vote, should authorize the commissioners to borrow money, that, on receiving the money, a bond or other evidence of indebtedness might be given for the payment of the money when due, under the terms of the loan. This would, perhaps, follow as an incident to the right to borrow. But, even then, the amount of money so borrowed should equal the amount for which the bond was given, otherwise there would be no end to the fraudulent practices of both officers and purchasers of bonds. Such a practice cannot be encouraged, and it is the duty of the courts to close the doors against it. If then the law does not authorize the voting of bonds for any such a purpose as building a court-house, then the authority to borrow money cannot be enlarged by the commissioners or the people so as to include the right to issue bonds and sell them at such price as can be procured therefor, when such authority has been withheld by the law-making power. This view is fully supported by a case recently decided by the Supreme Court (*Scipio* v. *Wright*, 101 U. S. 665)." *Lewis* v. *Commissioners*, *supra*.

The Election.—It is not unusual to require a vote of the people to precede an issue of bonds. In such case the law must provide for an election, for the people possess in themselves no inherent right to hold an election for any purpose unless authorized so to do by statute. Thus, it has been decided, that where certain persons were chosen county officers in an unorganized county in a territory, by a public meeting without the shadow of legal right or authority, and commissioned as such by the governor, who also acted without any right or authority, they were usurpers, and an election held under their authority was void: *Daly* v. *Estabrook*, 1 Bartlett 299. In this case the rule was laid down that no valid election could be held in an unorganized county. In *McKune* v. *Weller*, 11 Cal. 49, it is decided that an election cannot take place without statutory regulations, and that all the efficacy given to the act of casting a ballot, is derived from the law-making power through legislative enactment. Therefore the legislature must provide for and regulate the conduct of an election, or there can be none. See, also, *People* v. *Martin*, 12 Cal. 409; *Sawyer* v. *Haydon*, 1 Nev. 75; *State* v. *Collins*, 2 Id. 351.

In *Attorney-General* v. *Board of Supervisors*, 11 Mich. 63, a bill was filed to enjoin proceedings to remove a county seat. The law prescribed that the assent of a majority of the electors of the county voting thereon should be requisite to remove the county seat, and that the proposition should be submitted "at the next *township meeting* to the vote of the electors of such county." In the county were the cities of St. Clair and Huron, neither of which had township meetings, but charter elections instead, it was *held*, 1. That their charter elections could not be considered as town-

ship elections. 2. That inasmuch as the law did not provide for the submission of the question at charter elections in such cities, such a submission was void, and the award of the injunction was affirmed.

It is clear, therefore, that the law must provide for the election at which the question as to voting bonds, etc., shall be submitted, and if the election be not provided for, the submission is void.

What must be submitted at the Election.—What shall be submitted to the people at the election is always provided by the statute, and its requirements in this respect must be fairly complied with. A deficiency in the notice for the election in any substantial and material matter will invalidate the issue of the bonds. Thus, frequently the statute requires the amount of the tax to be levied to pay the bonds to be stated in the notice of the election. This requirement will not be filled by stating the amount of the tax to be levied as a certain per cent. per annum on the county valutiaon. It is the *amount* of tax to be levied, not the *proportion*, that must be stated. And the persons to whom is given the authority to fix the amount cannot delegate their power to any one else. There are several cases illustrating these propositions. In one the legislature had authorized the commissioners of a county to subscribe for shares of the capital stock of a railway company, but the act required the amount to be subscribed for to be designated by a grand jury of the county. The grand jury authorized a subscription "to an amount not exceeding $150,000." The commissioners subscribed for $150,000, and issued bonds for that sum. The court enjoined the railway company from selling the bonds in its possession, and ordered their restitution to the county, principally on the ground that they were issued without authority—the grand jury instead of deciding the amount themselves, having transferred the decision to the county commissioners. The court held that a discretionary power to subscribe for stock could not be transferred to, or exercised by, any other person or body than the one to whom it was granted: *Mercer Co.* v. *Pitts. & Erie Railroad Co.*, 27 Penn. St. 389.

A law authorized the Saline County Court to subscribe for railway stock, but provided that the subscription should not be made unless a majority of the taxpayers should vote for it, "specifying the amount." The order of the court, submitting the question to the people, called on them to vote for or against an amount "not exceeding $70,000," leaving the precise amount undetermined. The entry in the records of the county court, subsequent to the vote, declared that the election resulted "in favor of levying a tax of $70,000, to subscribe the same to the capital stock of the Lexington & St. Louis Railroad." It was held, on mandamus to compel the issue of the bonds, and to compel the levy of a tax for their payment, that such entry was not a conclusive finding by the court of the fact that the taxpayers voted to subscribe the specific sum of $70,000, but that it showed merely that the question submitted had received a majority of the votes; that the bonds of a county could be made valid only by a substantial compliance with the law that authorizes their issue, and that the failure of the voters to specify their amount in the case at bar, rendered the bonds issued in pursuance of such vote invalid: *State* v. *Saline Co. Court*, 45 Mo. 242.

In *Detroit, Ell, R. & I. Railway Co.* v. *Bears*, 39 Ind. 602, the statute required the amount of tax to be raised to pay the bonds, to be specified both in the petition for and the notice of the election, "not exceeding, however, two per centum upon the amount of taxable property of such county," etc. BUSKIRK, C. J., said: "The petition did not specify

any amount. It asked for two per cent. on the taxable property of the township. Two per cent. upon the taxables of the township is a specific proportion but not a specific amount. The amount of taxables varies every year, and the amount would not be the same in any two successive years. No year is mentioned in the petition, and it might mean the current year or the year preceding, upon which the tax had recently been paid. This uncertainty is fatal. It is the amount that is required to be specific and not the per centum. In the first section of the said act a clear distinction is made between the amount and the per centum, for it is provided that the amount shall be specified, which amount shall not exceed two per centum upon the taxable property of the preceding year. It is contended by the appellants, that "that is certain which can be made certain." We do not think, from the language used in the first and third sections of the act under consideration, that the legislature intended that the taxpayers should be required to go to the tax duplicate and ascertain the amount of the taxables, and then make a calculation to ascertain the amount to be assessed. The amount is imperatively required to be specified, but there is a limitation placed upon the board, by providing that such amount shall not exceed two per cent. of the taxables upon the duplicate for the preceding year. When the amount of the appropriation is stated in the petition and notice, in dollars and cents, the taxpayers will know the extent of the burden they are asked to assume."

Upon the same point see, also, *Cin., Wab. & Mich. Railroad Co.* v. *Wells*, 39 Ind. 539; *Alexander* v. *Pitts*, 7 Cush. 503; *Crooke* v. *Board*, 36 Ind. 320.

Who may restrain the Issue of Municipal Bonds.—That an injunction will lie at the suit of a taxpayer to restrain the illegal issue of bonds has been decided by the United States Supreme Court, Mr. Justice FIELD saying that, "of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county, or the illegal creation of a debt which they, in common with other property holders of the county, may otherwise be compelled to pay, there is, at this day, no serious question. The right has been recognised by the state courts in numerous cases, and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts of equity to interfere, upon the application of the taxpayers of a county, to prevent the consummmation of a wrong, when the officers of these corporations assume, in the excess of their powers, to create burdens upon property holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the state or county, there would seem to be no substantial reason why a bill by or on behalf of individual taxpayers should not be entertained to prevent the misuse of corporate power. The courts may be safely trusted to prevent the abuse of their process in such cases:" *Crampton* v. *Zabriskie*, 101 U. S. 601. To same effect see also *Normand* v. *Otoe Co.*, 8 Neb. 18; *Page* v. *Allen*, 58 Penn. St. 338; *Webster* v. *Harwinton*, 32 Conn. 131; *Oliver* v. *Keightley*, 24 Ind. 514, *Terrett* v. *Sharon*, 34 Conn. 105; *Merrill* v. *Plainfield*, 45 N. H. 126; *Drake* v. *Phillips*, 40 Ill. 388; *Grant* v. *Davenport*, 36 Iowa 396; *Wade* v. *Richmond*, 18 Gratt. 583; *Douglass* v. *Placerville*, 18 Cal. 643; *Stevens* v. *Railroad Co.*, 29 Vt. 546; *Gifford* v. *Railroad Co.*, 10 N. J. Eq. 171; *Baltimore* v. *Gill* 31 Md. 375; *Hooper* v. *Ely*, 46 Mo 505; *Bronenberg* v. *Co. Com.*, 41 Ind. 503; *Wright* v. *Bishop*, 88 Ill. 302; *Hodgman* v. *C. & St. P. Railway Co.*,

20 Minn. 59; *McPike* v. *Pen*, 51 Mo. 64; *Goegden* v. *Supervisors*, 2 Biss. 332; *Finney* v. *Lamb*, 54 Ind. 1; *U. P. Railroad Co.* v. *Lincoln Co.*, 3 Dill. 300; *Butler* v. *Dunham*, 27 Ill. 477, 478; *Prettyman* v. *Supervisors*, 19 Ill. 406; *Steines* v. *Franklin Co.*, 48 Mo. 176; *Crampton* v. *Zabriskie*, 101 U. S. 601.

Whether or not the attorney-general, on behalf of a state, may bring an action to enjoin a municipality from issuing bonds is a question as to which there is considerable conflict of opinion. In *People* v. *Miner*, 2 Lans. 396, Judge MULLIN decided that the attorney-general possessed no such authority, either at common law or under the statute. In his view, the only cases in which the attorney-general was authorized to interfere to restrain corporate action or was a necessary party to an action for that purpose were those in which the act complained of would produce a public nuisance, or tend to the breach of a trust for charitable uses. See, also, *People* v. *Albany, etc., Railway Co.*, 5 Lans. 25.

Judge DILLON criticises this view. "It is observable" (says he, 2 Mun. Corp., 3d ed., sect. 912, note), "that the learned Judge (MULLIN) seems to reason upon the basis, believed to be fundamentally erroneous, that the people, that is the state, in its corporate capacity and character, has no manner of interest in a litigation where the question is whether corporate powers which it granted have been exceeded or not."

Judge DILLON thus states the law: "The weight of authority seems to be that the attorney-general of a state or its other public law officer has, by virtue of his office, the right, in his name, or in the name of the state, upon the relation of persons interested, to bring, in cases which are properly of equitable cognizance, a bill in equity to prevent municipal corporations from exceeding the line of their lawful authority, or to have their illegal acts set aside or corrected." 2 Dill. Mun. Corp., 3d ed., sect. 912.

In *May* v. *City of Detroit*, 12 Am. L. R., N. S. 149, it is decided that the attorney-general may enjoin a municipal corporation from paying money on a contract made in disregard of its charter, Judge COOLEY holding such a case analogous to the violation of a corporate trust for charitable uses, and declaring that the same rule applies in both cases. To the effect also that the attorney-general may enjoin an *ultra vires* issue of bonds by a municipality. See *State* v. *Saline Co.*, 51 Mo. 350; *Davis* v. *Palmer*, 2 Duer (N. Y.) 669, and the numerous authorities cited therein.

Appeal from Decision to Issue Bonds.— It may be doubted whether an appeal will lie from a "decision" of county commissioners to issue bonds. Such appeals are frequently allowed by the legislature, but not from decisions which involve the exercise of discretion or are legislative in their nature. Thus, in the case of *O'Boyle* v. *Shannon*, 80 Ind. 159, an appeal from an order of the board of county commissioners selling railroad stocks belonging to the county was dismissed. The court decided that "this discretionary power of county commissioners over the property of their respective counties has been held to be analogous to the legislative power possessed by many municipal bodies, and is distinguishable from the judicial or *quasi* judicial powers conferred upon such commissioners (*Hanna* v. *Board*, 29 Ind 170). It follows, therefore, that the order of sale, from which an appeal was prayed in this case, was not a "decision" within the meaning of the statute authorizing appeals from county commissioners in a large class of cases. See also *Hamrick* v. *Rouse*, 17 Ga. 56.

Notice to Purchaser — Suspicion of Title.—There is no question that a person who takes commercial paper before it becomes due, for a valuable consideration, without knowledge of any defect

of title, and in good faith, will hold it by a valid title against all the world. The other proposition that suspicion of a defect of title or a knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer will not defeat his title, is not so well established. But, though it is apt to strike the mind somewhat unfavorably, it is probably good law. It is *knowledge* of a defect in a title that vitiates it, and mere suspicion is not knowledge nor is gross negligence knowledge of a defect in the title, although it may be evidence of such knowledge: *Murray* v. *Lardner*, 2 Wall. 110; *Swift* v. *Tyson*, 16 Pet. 1; *Goodman* v. *Simonds*, 20 How. 343; *Bank of Pittsburgh* v. *Neal*, 22 Id. 96.

ADELBERT HAMILTON.

Chicago.

Supreme Court of Ohio.

HERSHISER, ADAMS & CO. *v.* FLORENCE ET AL.

A married woman having separate estate, who executes a promissory note as surety for her husband, will be presumed, without further proof, to intend thereby to charge her separate estate. Such presumption can only be overcome by proof of facts or circumstances surrounding the execution and delivery of the note, which show that such was not her intention.

Real estate purchased by a married woman with her individual means, becoming her general property, was, by a subsequent statute, changed into her separate estate subject to vested rights. Such property was not thereby subjected to her debts previously made, and the husband's freehold, *jura uxoris*, was not divested. Subject, however, to vested rights, and with reference to her future contracts, such property is to be regarded as separate property.

ERROR to the District Court of Madison county.

The action was brought to charge the separate estate of a wife with the payment of two promissory notes for $200 and $400, executed by husband and wife, the wife having a separate estate at the time.

The facts, as agreed upon, were that prior to 1833, John Williams died intestate, possessed of 1804 acres of land, leaving four children, John Williams, Jr., Harrison Williams, Washington Williams and defendant, Elizabeth Florence, then Elizabeth Williams, his only children and heirs, to whom descended this land as tenants in common in fee simple. Elizabeth Williams married Robinson Florence in 1833, and they have ever since that time resided together as husband and wife. About 1840, Robinson Florence purchased Harrison Williams's undivided one-fourth of said land. About 1845 he purchased John Williams, Jr's., undivided one-fourth. About 1840, the undivided one-fourth of Washington Williams